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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,713	02/27/2004	Colette Seyfried	23-0382	9617
40158	7590	12/13/2005	EXAMINER	
WOODS FULLER SHULTZ & SMITH P.C. ATTN: JEFFREY A. PROEHL P.O. BOX 5027 SIOUX FALLS, SD 57117			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SR

<b>Office Action Summary</b>	<b>Application No.</b> 10/789,713	<b>Applicant(s)</b> SEYFRIED, COLETTE	
	<b>Examiner</b> Gloria Hale	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Amendment /RCE of 9-7-05.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10 and 17-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10 and 17-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the complementary fastener on the garment surface as in claims 10, 17 and 18 must be shown or the feature(s) canceled from the claim(s). However, no new matter should be entered and this could be considered to be new matter.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 10 and 17-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claims 10 and 17 the recitation that the apparel includes a complementary fastening member thereon for fastening to the band interior surface is new matter. It was not originally disclosed in the original specification, claims or drawings. The newly added language to claim 10 in regard to the spacing of the pocket from the edge "to inhibit access to the pocket" is also new matter. The spacing does not inhibit access since access is still possible. There is no support in the original specification, claims or drawings for this limitation. In claim 18 there is no support in the specification that the second fastener is removably fastened from the article of apparel. No support is in the specification for the limitations of claim 20 either.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10 and 17-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite for the same reasons as discussed above. Also, the listing of the fastener components in claims 10, 17 and 27 is indefinite in that some of those listed such as the clip, teeth, clasp and velvet do not have a complementary component. Also multiple embodiments are being claimed in present claim 10. In regard to claim 17 the claim is indefinite in that it is claiming limitations from multiple embodiments such as that the band is generally round in shape and then is a helical shape. It is not clear as to how the band strip is round as in claims 17 and 21. Then how is it also helical? In claim 17, the limitations "appearance in an organic form" is not clearly claimed. In claim 18, line 8 there is no antecedent basis "to the exterior of the front portion of the article of apparel". In claim 18, it is not clear as to how the second fastener member is removable from the article of apparel. In claim 26, the language is redundant and should be written as "appearance of a coiled snake".

However, the claims, as best understood, have been examined on their merits.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smart (US 4,825,475) in view of Tomlinson (US 5,794,769).

Smart discloses a retaining device of a round, flexible band conformable around an extremity of a user including engagement means of a clip or compression. The

band is linear and elongated like a snake as broadly claimed and includes an interior surface and an exterior surface. Smart also discloses an interior pocket, which selectively retains an accessory, the clip. The band is wearable on a wearer over their clothing, under their clothing or directly on their skin surface as desired. However, Smith does not specifically disclose the band as including indicia, a storage pocket and the illumination members as claimed. Tomlinson discloses a retaining device with a storage pocket (15, as seen in figure 1A and described in col. 4, line 6) and with the indicia and illumination members as described in col. 7, lines 23-29 as being the jewels which are like applicant's rhinestones. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the band of Smart with the teaching of Tomlinson to include the storage pocket to store items therein in addition to the indicia and illumination means (jewels or rhinestones) for aesthetic purposes.

### ***Response to Arguments***

Applicant's arguments filed 9-7-05 have been fully considered but they are not persuasive. In regard to applicant's remarks in regard to the illumination member, the illumination member of Tomlinson is the jewels which are rhinestones and which are the same as applicant's.

The present amendment has added new matter. The original specification did not describe or disclose the fastener that is attached to the apparel. One of ordinary skill in the art would not be aware of the attachment to the apparel as applicant has argued on page 6 of the remarks. The attachment of a separate snap component on a

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garment, which is then complementary to a fastener on the interior of the band, is not described in the specification as originally filed. It appears that applicants present remarks are stating that one of ordinary skill would have known how to construct the fastener on the apparel for attachment to the fastener snap component on the band and that it is not new matter. Applicant has multiple embodiments in the application and claims. The embodiments supported by the original specification are only the embodiments without the complementary fastener components such as the velvet and the hook. The snaps and complementary type fasteners are not supported by the original specification and are new matter. These embodiments must be submitted in a continuation in part application. The complementary fastener component (such as a snap component) on the garment itself was not described or shown in the original application. The snap component was only shown on the interior of the band.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gloria Hale  
Primary Examiner  
Art Unit 3765

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